IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9743 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SACHINKUMAR KANAYALAL JOSHI

Versus

STATE OF GUJARAT

Appearance:

MR NV GANDHI for Petitioner

MR UDAY BHATT Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 12/10/2000

ORAL JUDGEMENT

1. The petitioner-detenu has by preferring this writ petition under Article 226 of the Constitution of India, challenged the legality and validity of the order of detention dated 4.5.2000, Annexure-A, in respect of petitioner passed by the respondent no. 2 in exercise of

powers conferred upon him under sec. 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short 'the Act').

2. As per the papers of the grounds of detention, it is the case of the detaining authority that the petitioner-detenu is a 'dangerous person' within the meaning of sec. 2(c) of the Act and, that his activities are prejudicial to the maintenance of public order. To arrive at a subjective satisfaction, he has placed reliance on 7 different IPC cases registered in PAlanpur City Police Station. Mainly, that offences are releting to the offence of cheating. The detaining authority passed an order of detention on 4.5.2000, which is challenged in this writ petition.

3. Though rule has been served upon all the respondents, they have not filed affidavits-in-reply, in reply to main petition controverting the grounds of attack mentioned in the memo of petition.

4. Mr NV Gandhi learned advocate for the petitioner argued that looking to the list of the offence referred to at page 26 of the grounds of detention, 7 cases have been lodged against the petitioner-detenu and last offence at sr. no. 7 was registered on 19.11.99 and after about 4 months and 15 days, this order of detention came to be passed. He has cited an authority of Elesh Nandubhai Patel vs. Commissioner of Police Ahmedabad city & Ors., reported in 1997 (1) GLH 381, wherein it has been held that what is required by law is that the delay must be satisfactorily explained by the detaining authority. Here in this case, when the detaining authority has come with a case that the activities of the detenu are prejudicial to the maintenance of public order, no another case has been registered after 19.11.1999. Thus, non explanation of delay vitiates the delay for want of subjective satisfaction on the part of the detaining authroity. It is further held that unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself.

5. In view of what is stated hereinabove, this petition is allowed. The impugned order of detention dated 4.5.2000 passed by the respondent no. 2 in respect of detenu is quashed and set aside. The detenu is ordered to be released forthwith, if he is not required to be detained in any custody for any criminal case or proceedings. Rule is made absolute. Direct service is permitted.

(H.H. MEHTA, J.)

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